

RECEIVED

SEP - 2 1994

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In re Applications of)	MM DOCKET NO. 94-10
)	
THE LUTHERAN CHURCH/)	File Nos. BR-890929VC
MISSOURI SYNOD)	BRH-890929VB
)	
For Renewal of Licenses of)	
Stations KFUD/KFUD-FM)	
Clayton, Missouri)	

DOCKET FILE COPY ORIGINAL

To: Administrative Law Judge
Arthur I. Steinberg

MASS MEDIA BUREAU'S
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Respectfully submitted,
Roy J. Stewart
Chief, Mass Media Bureau

Charles E. Dziedzic
Chief, Hearing Branch

Robert A. Zauner

Y. Paulette Laden
Attorneys
Mass Media Bureau

Federal Communications Commission
2025 M Street N.W., Suite 7212
Washington, D.C. 20554
(202) 632-6402

September 2, 1994

No. of Copies rec'd
List ABCDE

845

TABLE OF CONTENTS

	<u>Page(s)</u>
Preliminary Statement	2
Proposed Findings of Fact	
History of the Licensee	3
Employment Practices	
Hires During the License Term	8
Requirement for Lutheran Affiliation	10
Minority Recruitment	13
Employment Sources	14
FM Recruitment after May 1987	16
Filing of Petition to Deny	25
Subsequent Recruitment Efforts	26
Classical Music Requirement	26
Mitigation	27
Representations to the Commission	
Number of Job Hires	28
Recruitment	33
Classical Music Training	35
Conclusions of Law	
Section 73.2080 Issue	45
Misrepresentation/Lack of Candor Issue	54
Ultimate Conclusion	62

MASS MEDIA BUREAU'S
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

RECEIVED

SEP - 2 1994

Preliminary Statement

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

1. By Hearing Designation Order and Notice of Opportunity for Hearing for Forfeiture, 9 FCC Rcd 914 (1994) ("HDO"), the Commission designated the above-captioned application for hearing upon the following issues:

(1) To determine the extent to which the licensee of Stations KFUE/KFUE-FM complied with the affirmative action provisions specified in Section 73.2080(b) of the Commission's Rules, 47 C.F.R. Section 73.2080;

(2) To determine whether the licensee of Stations KFUE/KFUE-FM made misrepresentations of fact or was lacking in candor in violation of Section 73.1015 of the Commission's Rules, 47 C.F.R. Section 73.1015, with regard to the stations' EEO program and documents submitted in support thereof;

(3) To determine whether, in light of evidence adduced pursuant to the foregoing issues, a grant of the subject license renewal applications would serve the public interest, convenience and necessity.

2. By Memorandum Opinion and Order released March 25, 1994, FCC 94M-191, the Presiding Judge modified Issue (1) to read as follows:

(1) To determine the extent to which the licensee of Stations KFUE/KFUE-FM complied with the nondiscrimination and affirmative action provisions specified in Sections 73.2080(a) and 73.2080(b) of the Commission's Rules, 47 C.F.R. Section 73.2080 [.]

3. The HDO placed the burden of proof with respect to all issues on the licensee of Stations KFUE and KFUE-FM, The Lutheran Church/Missouri Synod ("the Church"). Hearing sessions were held on June 20, 21, 22, 23 and 24, 1994, whereupon the record was closed. Tr. 1117. The Mass Media Bureau hereby submits its Proposed Findings of Fact and Conclusions of Law¹.

Proposed Findings of Fact

History of the Licensee

4. The Church is the licensee of radio broadcast stations KFUE(AM) and KFUE-FM, Clayton, Missouri. KFUE(AM) is a daytime only station operating noncommercially and broadcasting religious programming. KFUE-FM is a full-time commercial station broadcasting a classical music format with some religious programming. Church Ex. 1, p. 1.

5. When KFUE(AM) went on the air in 1924 it was licensed to Concordia Seminary. It began to broadcast from an attic studio at the Seminary, then located in St. Louis. In 1926, the Seminary relocated to Clayton, necessitating relocation of its radio station. At that time, it was proposed that the Synod take over the station, with control in the hands of the Board of

¹ The Presiding Judge has waived the requirement for the inclusion of a Summary. Tr. 1116.

Control of Concordia Seminary. Thus, during the late 1920's the licensee of record was "The Evangelical Lutheran Synod of Missouri, Ohio, and other States, through Board of Control of Concordia Seminary." Church Ex. 1, Pp. 1, 3-4.

6. On March 2, 1938, in a proceeding involving a request by KFUD for an increase in its time share with another station, the Commission noted that KFUD was on the grounds of Concordia Seminary and that its talent drew almost entirely from the Church, prominent ministers, and the faculty and student body of the Seminary. Church Ex. 1, Pp. 6-7, Att. 4. Shortly after that decision, the Commission granted the station's request to modify its frequency to 850 kHz. Church Ex. 1, p. 7.

7. In 1948, the Church, then called "The Evangelical Lutheran Synod of Missouri," was granted an FM license. The new call letters were KFUD-FM. Shortly thereafter, the licensee of both stations changed its name to "The Lutheran Church - Missouri Synod." Church Ex. 1, p. 7.

8. From 1948 until 1974, religious and classical music programming was simulcast on KFUD(AM) and KFUD-FM. After 1974, the stations simulcast only on weekends, but both continued to be operated on a noncommercial basis. In March 1983, the Church decided to accept commercials on the FM station. During the most recent license term, from February 1, 1983 to February 1, 1990,

KFUO broadcast traditional religious programming and KFUE-FM broadcast largely classical music, while continuing to air some traditional religious programs. A stated aim of the FM station is to foster the reciprocal relationship between classical concert music and sacred music. Church Ex. 4, p.3; Church Ex. 7, Pp. 2-3, 5.

9. From an operations perspective, the two stations have been treated as one, and each is dependent upon the other. KFUE and KFUE-FM have operated out of the same building on the campus of Concordia Seminary. A number of job positions have overlapped both stations, namely certain positions in management, in the business department, in engineering, as well as certain secretarial, clerical and receptionist positions, although engineers and receptionists have been considered employees of the AM station because of the way records are kept. Portions of the music library were shared during the license term. Church Ex. 4, p. 3; Tr. 618-20, 625.

10. In addition to the fact that Concordia Seminary, both individually and later through the Synod, was the licensee of KFUE(AM) for many years, the relationship between the Seminary and the stations has been interwoven in other respects. The stations have been able to maintain their facilities on Seminary property. Furthermore, the stations have been able to employ Seminary students and their spouses on full and part time bases.

These individuals have had both Lutheran training and a personal conviction regarding the ministry of the stations, and they have been willing to work for the relatively low salaries that the stations have been able to pay. Church Ex. 1, p. 6; Church Ex. 7, Pp. 4-6; Tr. 288, 851-2. There is no written agreement with respect to the hiring of Seminary students and their spouses, nor has there been an established policy giving students and their spouses a preference. However, station management has had a moral commitment to employ students and their spouses whenever opportunities arise. Tr. 288, 854.

11. Prior to 1986, the stations were operated by the Board for Lutheran Radio, which was directly accountable to the Church's membership and its Board of Directors. In 1986, the Church assigned responsibility for radio operations to the Board for Communications Services. This Board, in turn, has a standing committee, the Board for Lutheran Radio, which oversees the stations. Since March 1, 1982, the executive director of the Board for Communications Services has been the Rev. Paul Devantier. As the executive director, Devantier serves as a liaison between the stations and the Board and also serves as the stations' chief executive officer. Rev. Devantier holds a Masters in Divinity from Concordia Seminary and a Masters in Mass Communication from Southern Illinois University. Church Ex. 7, Pp. 1, 7-8, Att. 1.

12. Rev. Ralph A. Bohlman was the president of the Lutheran Church/Missouri Synod from 1981 to 1992. From 1974 to 1981 he was the president of Concordia Seminary. Rev. Bohlman has known Rev. Devantier for many years. Rev. Devantier was a student of his at Concordia Seminary. Rev. Bohlman knows Rev. Devantier as a man with a "deep commitment to the Church's own policies of non-discrimination." In Rev. Bohlman's opinion, Rev. Devantier's commitment to the Church's non-discrimination policy is demonstrated by the fact that two members of Rev. Devantier's own household are bi-racial children, one adopted and one a foster child. Church Ex. 1, Pp. 1, 8; Tr. 278.

13. The Church maintains a "Commission on Black Ministry." The Commission's current director is Rev. Bryant Clancy. Clancy, who is African American, has held this position since July 1, 1990. Before assuming his position as director, for eight years, Rev. Clancy was Executive Director for Congregational Services of the Southeastern District of the Church and had held the position of Vice-President of that Church District. In each of these positions, Rev. Clancy sought to recruit African Americans to attend the Church's colleges, universities and seminaries and to recruit African Americans for full-time Church work. Church Ex. 2, p. 1.

14. According to Rev. Clancy, the Church has approximately 50,000 African American members out of a total Church membership

of 2.6 million. Approximately 86 Black Lutherans serve as pastors of congregations and 30 serve as college or seminary faculty and administrative staff members. The Church has approximately 100 White pastors who serve predominantly Black congregations and three Black pastors who serve predominantly White congregations. Currently, 17.9 percent of the students at the 12 campuses of Missouri Synod colleges and universities are minorities and more than half of them are African American. Church Ex. 2, p. 1-3.

Employment Practices

Hires During the License Term

15. The license term for KFUE and KFUE-FM is from February 1, 1983 to February 1, 1990. According to KFUE and KFUE-FM's annual employment reports, during the license term, the stations employed the following numbers of persons each year on a full-time basis:²

² The table below understates the stations' minority hiring record. Ruth Clerkly, who was hired on September 30, 1984, and left KFUE on December 26, 1986, did not appear in the 1984 employment report. Helen Richardson, who was hired on March 26, 1985, and left KFUE on August 31, 1985, did not appear in any employment report. Similarly, Lisa Harrison, who was hired on August 28, 1985, and left KFUE on January 10, 1986, did not appear in any employment report. Caridad Perez, who was hired on March 7, 1988, and left KFUE on January 31, 1989, did not appear in the 1988 employment report. And, Cynthia Blades, who was hired on November 1, 1989, and left KFUE on April 20, 1990, did not appear in the 1989 employment report. Including these individuals, the stations had 2 minority employees in 1984, 4 in 1985, 1 in 1988 and 2 in 1989. Church Ex. 4, p. 14.

<u>Year</u>	<u>Total</u>	<u>Minorities</u>	<u>Percent Minorities</u>	<u>Number of Minorities For 50% Parity</u>
1983	17	1	5.9%	1.3
1984	18	1	5.6%	1.4
1985	17	2	11.8%	1.3
1986	17	1	5.9%	1.3
1987	18	0	0.0%	1.4
1988	23	0	0.0%	1.8
1989	26	1	3.8%	2.0

Church Ex. 4, Att. 7, Pp. 2, 23; NAACP Ex. 24.

16. During the license term, KFUD and KFUD-FM hired a total of 43 full-time employees. Sixteen were hired to work for KFUD and 18 were hired to work for KFUD-FM. Nine were hired to work for both stations. Six of the hires were African Americans and one was of Spanish heritage. During the license term KFUD hired to fill the following full-time positions:

- Acting Director of Development
- Director of Development
- Director Audio Services
- Announcer (3 Hires)
- Secretary (4 Hires)
- Announcer/Program Director
- Receptionist (2 Hires)
- Associate Director Development
- Station Manager
- Assistant Director Development

During the license term, the following full-time positions, which served both KFUD and KFUD-FM, were filled:

Business Manager
Assistant to Business Manager
Receptionist (5 Hires)
Director of Broadcast Ministries
Maintenance

During the license term the Church hired to fill the following full-time positions at KFUD-FM:

Sales Worker (14 Hires)
Station Manager
Sales Manager
Announcer
Secretary

Church Ex. 4, Att. 6, Pp. 1-8.

Requirement for Lutheran Affiliation

17. KFUD and KFUD-FM, at the beginning of the license term, had a written policy which specified:

It is the policy of this station, as set forth by the Board of Directors, to provide employment ... without regard to race, color, religion, national origin, sex or age except where religious affiliation is a bona fide occupational requirement.

Church Ex. 4, p. 5. During the license term the Church's view was that every position at KFUD, with the sole exception of the position of maintenance worker, required a knowledge of Synod doctrine and philosophies. Church Ex. 4, Pp. 1, 7-8; Tr. 495-96, 499-501, 618-19, 741-44. Rev. Devantier understood the stations' Equal Employment Opportunity ("EEO") program during the license term to be the provision of equal opportunity to job applicants and current employees regardless of their race. Tr. 861.

18. Dennis Stortz, a life-long member of the Lutheran Church/Missouri Synod, has been the Director of Operations of both KFUD and KFUD-FM since 1991. He has been employed at the stations since 1975. From 1978 to 1991, Stortz was Operations Manager for both KFUD and KFUD-FM. During part of that time, specifically from July 1986 to May 1987, he was also the Acting General Manager of both stations. While Acting General Manager, and since 1991 as Director of Operations, Stortz has had day-to-day responsibility for hiring and personnel practices. Even when he did not have ultimate authority for hiring or personnel decisions, Stortz was involved in or otherwise aware of the processes involved and the considerations behind personnel actions at the stations. Church Ex. 4, p. 1.

19. According to Stortz, the station manager of KFUD needed to be familiar with the mission and doctrine of the Church because part of his job was to insure that the station not preach false doctrine. The director of development needed to understand the ministry of KFUD and its relation to doctrine and to the Bible to create the station's fundraising letter. The director of development position was held by a Lutheran pastor. Stortz also claimed that it was helpful for certain secretaries to be familiar with the Lutheran Church because part of their job was to contact pastors to enlist volunteers for KFUD fundraising "Share-A-Thons," and because secretaries were required to interact with Lutheran pastors and schedule them for on air

appearances. In addition, Stortz claims that secretaries at KFUD needed Lutheran knowledge because they scheduled religious services and Bible studies based on the Lutheran calendar. In the Lutheran calendar, each Sunday has special significance. Usually the program director made the decision as to who to invite to appear on KFUD, but secretaries did that as well. Church Ex. 4, p. 7, Tr. 495-96.

20. While the Church could train non-Lutheran employees to do the secretary's job, it would take time. Moreover, it was the feeling of the Church that people who donate money to the station during "Share-A-Thons" would rather speak with and give money to fellow Lutherans. Tr. 499-500.

21. The Church also held that a knowledge of Lutheran doctrine was essential to be an announcer of religious programming on KFUD. Such knowledge was necessary for selecting and presenting the materials and for responding to caller inquiries. The director of audio resources (title changed to manager of religious programming in 1988) also required Lutheran training because he was responsible for managing the broadcasts of live worship service on KFUD from area Lutheran congregations, for producing that station's Christian music programs, for arranging for daily worship programs produced by the station, and for creating other worship program features produced and broadcast by the station. Church Ex. 4, p. 8.

22. Stortz also claimed that membership in the Lutheran Church, Missouri Synod, was desirable for any receptionist (who would have worked for both stations) because receptionists needed to interface with religious listeners and potential donors. The studios of KFUE (AM) and KFUE-FM were located in the same building at Concordia Seminary during the license term and this meant that engineers, receptionists, the business department and some management employees served both stations. Church Ex. 4, p. 8; Tr. 618-19.

23. Stortz believed it was desirable, although not absolutely necessary, for persons hired for the position of business manager to have Lutheran training. This was because the business manager interacted on a daily basis with the Lutheran Church Headquarters. Tr. 744. Although no engineers were hired during the license term, Stortz believed it was desirable for the stations' engineers to have Lutheran training. This was because engineers went to area churches and interacted with pastors to organize remote broadcasts of religious services. Tr. 741-43.

Minority Recruitment

24. In the stations' 1982 renewal application, the Church represented with regard to recruitment that:

When vacancies do occur, it is the policy of KFUE and KFUE-FM to seek out qualified minority and female

applicants. We deal only with employment services, including state employment agencies, which refer job candidates without regard to their race, color, religion, national origin or sex.

We encourage present employees, particularly minority and female employees to refer minority and female candidates for existing and future job openings.

Church Ex. 8, p. 4; MMB Ex. 1, p. 6.

25. Up until near the end of the license term, the stations did not specifically recruit for minority employees. Until mid-1989, the stations' effort at recruiting minorities was limited to the use of employment sources which themselves did not discriminate. Thus, the stations advertised in the St. Louis Post Dispatch for sales persons and Broadcasting Magazine for a general manager of the AM station, a station manager of the FM, a sales manager, a director of Audio Resources, and an announcer on the AM station. Beginning in 1986 or 1987, the station also posted openings at the Church's International Center, whose employees were approximately 11.5% African American. KFYO also advertised in periodicals such as The Lutheran Witness which was widely distributed to members of the Lutheran Church-Missouri Synod, including the Church's African American members. Church Ex. 4, Pp. 11-12. There are 50,000 African American members out of a total Church membership of 2.6 million. Church Ex. 2, p. 1.

Employment Sources

26. During the license term, the stations' primary recruitment sources were existing employees and Church related

institutions, including Concordia Seminary. Of the 43 full time hires during the license term, 10 were referred by station employees and 7 were Concordia Seminary students or their wives.³

27. Among those who were referred by existing station employees were Ruth Clerkly and Helen Richardson. Both of these employees were hired during the license term and are African Americans. Clerkly was referred to the stations in 1985 by Lula Daniels, an African American, who at the time was coordinator of worship programming.⁴ Both Richardson and Clerkly learned of job openings from contacts that they had made at local Lutheran Churches. Church Ex. 4, Pp. 6-7. According to Rev. Devantier, Clerkly had been considered for a management position based on a recommendation by Daniels, but Clerkly left the stations' employ before the station acted. Tr. 883.

28. The stations also obtained employees through advertisements placed in Lutheran publications and from postings at Church headquarters. For two positions, one in sales and the other for station manager, advertisements were placed in Broadcasting Magazine. Other employees hired during the license term included three persons who simply "walked in" and sought

³These 7 hires were Steven Benko, Mary Wicklman, Ruth Gies, Christine Keseman (twice), Linda Sund, and Sue Crown. Keseman left and was rehired in August 1989.

⁴Daniels was a long time employee of the stations. Her position was considered to be that of a department head. She died in 1985. Tr. 748-49.

employment because they wanted to do church work. One of these individuals had volunteered to work for the station without pay. Tr. 745-46, 752.

FM Recruitment after May 1987

29. In May 1987, Thomas M. Lauher was hired for the position of General Manager of KFUE-FM. His duties did not include KFUE matters. Lauher was a non-Lutheran whose background was in broadcasting and advertising. At the time he was hired, Lauher was not given any instructions that seminary students or their spouses or Lutherans were to be preferred in hiring. Also, he was not instructed that he should hire Lutherans or that persons with Lutheran training should be preferred. Church Ex. 6, p. 1; Tr. 134-35.

30. When Lauher began work at KFUE-FM, he noticed that, although there were men and women working at the station, there were no minorities. He determined that, as General Manager, he wanted to hire minorities. Tr. 139-41, 144. Lauher initiated the process of hiring sales workers by contacting the St. Louis Broadcast Center⁵ and taking out advertisements when openings arose in various publications including Broadcasting Magazine and

⁵ The Broadcast Center is the only broadcast trade school in the St. Louis area. It is operated in conjunction with a St. Louis radio station. In 1989, its enrollment was approximately 5.9% African American. Tr. 141-42, 613-14.

the St. Louis Post-Dispatch. He interviewed Caridad Perez, an hispanic female, who had applied for a sales position at KFUE-FM and recommended to Ken Lombardi, the Director of Broadcast Ministries, that she be hired. On March 7, 1988, Perez was hired. Church Ex. 4, Att. 6, p. 5; Church Ex. 6, p. 1; Tr. 194, 515-16.

31. In the fall of 1988, Lauher attended a meeting of the Missouri Broadcasters Association. The meeting was a license renewal seminar designed to inform broadcasters of the FCC's renewal requirements. At the meeting, he heard Matthew Leibowitz, a communications attorney, speak on the subject of EEO compliance. Leibowitz stated that EEO compliance is the most critical area in license renewal. Leibowitz told his audience that stations had to follow their own EEO plan. Lauher found Leibowitz "very persuasive." Church Ex. 6, p. 2; Tr. 144-45.

32. After attending the meeting, Lauher decided to review KFUE-FM's compliance status, which included the FCC's EEO requirements. He contacted the Church's communications counsel, Marcia Cranberg, and discussed with her those requirements. He also discussed with Cranberg the advisability of separating the EEO programs of KFUE and KFUE-FM. By letter dated December 20, 1988, Cranberg provided Lauher with, inter alia, a copy of the most recent (1982) Equal Employment Opportunity report on file at the FCC for KFUE and KFUE-FM and advised Lauher that she had been

assured by the FCC staff that a single EEO program for both stations would suffice. Lauher discussed with Cranberg the stations' 1982 Model EEO program. Based on this discussion with counsel, and his review of the stations' policies and procedures, he prepared a memorandum to Paul Devantier dated March 9, 1989, regarding "License Renewal." Church Ex. 6, p. 2; Church Ex. 8, Att. 5.

33. In his March 9, 1989, memorandum, Lauher stated, in pertinent part:

This report is the result of on-going personal review and reading, attendance at two different renewal seminars, consultations and communication with Arnold & Porter and conversations with employees regarding past practices. It represents, to the best of my knowledge, a comprehensive review of performance, recommendations for improvements, and an outline of areas in which there is concern. All such concerns are included in this report; I know of no others.

... We are taking action now to address specific concerns outlined below. Failure to do so could create significant jeopardy in license retention. If the concerns are not addressed quickly, the worst possible consequence is loss of license.

34. In his memorandum, Lauher identified the "most critical area in license renewal" to be EEO Compliance. Concerning the stations' EEO compliance he stated:

As Matthew Leibowitz said at the Missouri Broadcasters Association fall seminar on renewal: "Numbers do not work any more. Now the FCC looks for affirmative action based on the EEO program model currently on file as developed by the station. The question is: Is the station following its own plan?" Marsha (sic) Cranberg agrees with the seminar view. As described below there are plenty of areas for improvement in our compliance. At the time the AM and FM operations were

absorbed into the Synod certain procedures, forms, job descriptions, etc. were introduced which inadvertently put the stations in a non-compliance situation.

... I have discoverd (sic) that we are operating in violation of our own policy as currently on file. I have reason to believe this applies to the AM operation as well as the FM operation. I have taken steps in good faith to assure full compliance in FM. I shared with Jerry Housholder those steps taken on FM.

Church Ex. 7, Att. 5.

35. Lauher went on to specify three areas where he felt the stations' EEO performance did not conform with the stations' own EEO program as set forth in the 1982 renewal application. He noted that Rev. Abatie, the person stated to be responsible for the stations' EEO plan in the model EEO program, was no longer with the station. He also noted that the stations' job application form did not contain the notice that the stations did not discriminate in their hiring practices and did not comply with regulations outlined in a handbook for broadcasters. Finally, he noted that KFUE-FM's job descriptions were not "job specific" and "objective." "At the very least," Lauher recommended, "separate employment applications and hiring criteria should be in place for KFUE-FM (also KFUE-AM)." Church Ex. 7, Att. 5.

36. Lauher believed that KFUE-FM was in compliance with that portion of the stations' EEO program that specified that "when vacancies do occur it is the policy of KFUE and KFUE-FM to seek out minority employees" He believed this was so

because KFUD utilized employment sources which did not discriminate in referring applicants. Tr. 149.

37. At the time Lauher wrote his memorandum, the stations' application for employment form did not include a statement that KFUD and KFUD-FM were equal opportunity employers. According to Lauher the failure to include that language on the application form was inadvertent and, even though not stated on the application form, the stations' policy was not to discriminate in hiring. Moreover, the form also contained the statement: "Because we are a church body, the Lutheran Church/Missouri Synod retains the right to give preference in the hiring of persons who are in good standing of an LCMS congregation." The form also asked applicants for their religious affiliation. Lauher's concern with the application form, which was used throughout the Lutheran Church/Missouri Synod, including the two radio stations, was that by stating that a preference would be given to Church members, the form appeared to violate the stations' stated policy to give all applicants an equal opportunity for employment. MMB Ex 25; Tr. 154, 161, 164-65.

38. Lauher could not recall any specific discussions with Devantier about his memorandum, although he assumes the memorandum was discussed. Also, while he has no specific recollection of Devantier asking him about his concerns with the stations' EEO compliance, he did recall being encouraged to do

whatever was necessary to ensure compliance with EEO requirements: Tr. 157-58, 180, 855.

39. On March 15, 1989, Lauher sent Rev. Devantier a second memorandum regarding EEO compliance. This memorandum consisted of a check list of 130 items from the EEO Handbook, "A Practical Guide for Broadcasters." Next to those items which Lauher felt KFUE-FM had implemented or completed, he placed a check mark. Church Ex. 6, Att. 7; Tr. 166-67.

40. Lauher placed a check mark next to "Take EEOC matters seriously" because, in his opinion, KFUE-FM was taking EEO matters seriously. He did not check "Establish an EEO officer to implement your station's EEO program and to keep current on developments in the law" because no decision had been made yet as to a replacement for Rev. Abatie. He did not check "Maintain a list of the recruitment sources you will use in seeking qualified female and minority applicants" because the station had not yet evaluated its current sources. In this regard, while Lauher maintained that the station had a list of minority sources, he admitted that he had never seen such a list. He did not check "Contact minority organizations, organizations for women, media, educational institutions, and other potential sources of female and minority applicants for referrals" because he had not checked to see if the station was doing that. Tr. 167-69, 178-79.

41. After forwarding his checklist memorandum to Rev. Devantier, Lauher had a discussion with Rev. Devantier in which they discussed whether the items on the checklist pertained to religious stations. Lauher and Rev. Devantier had a number of discussions about the checklist which concluded with Rev. Devantier telling Lauher to do whatever he needed to do. Church Ex. 6, p. 3.

42. Lauher wanted a separate EEO program for the AM station. He believed there were legitimate reasons for the AM to ask questions of a religious nature of applicants for certain positions. He felt that those questions would be inappropriate, however, for the FM station. In response to questions posed by Lauher, the stations' communications counsel, Cranberg, by letter dated April 4, 1989, explained the holdings of several FCC and Court of Appeals decisions in which the applicability of EEO requirements to broadcast stations with a religious affiliation were discussed. Cranberg attached a copy of the Commission's ruling in Kings Garden to her letter to Lauher. Church Ex. 8, p. 5; Church Ex. 8, Att. 6; Tr. 152.

43. After sending the memoranda to Rev. Devantier, and in response to Rev. Devantier's instruction that he should do whatever was necessary, Lauher took steps to conform KFUE-FM's EEO practices with its policies. On April 26, 1989, Lauher sent a memo transmitting updated material to the stations' management.

The items transmitted included a revised application form, a KFUE-FM EEO Policy Statement and a copy of a "Notice to Employees and Applicants for Employment Regarding Station EEO Policy and Program."⁶ Also included was a draft letter for sending to recruitment sources. The letter stressed that KFUE-FM was an equal opportunity employer that encouraged members of minority groups and women to apply for positions. The letter requested that minority group members and women who might be interested in working for KFUE-FM be referred directly to Lauher. Church Ex. 4, Att. 13; Tr. 180-81.

44. The application for employment form which Lauher revised begins with a statement notifying applicants that discrimination because of a person's race, color, creed, religion, sex, national origin, or age is prohibited by the Federal Communications Commission and persons who feel that their EEO rights have been violated may contact the appropriate agency. It concludes with a similar statement and provides the address of the Equal Employment Opportunity Commission of the Missouri Commission on Human Rights. The new application form makes no reference to a preference for members of The Lutheran Church/Missouri Synod, nor does it seek information on an

⁶ This "notice" stated the stations' policy to provide equal employment opportunity to all qualified individuals without regard to race, color, religion, national origin, or age. It also requested that, if current employees know any qualified minorities or women who might be interested in working for the stations, they refer them to the stations.

applicant's religious affiliation. Church Ex. 4, Att. 13, Pp. 8-11.

45. On July 18, 1989, Lauher sent a letter to the following organizations seeking minority referrals:

Roth Young Personnel Service of St. Louis
University of Missouri, Job Placement
Merrimac Community College
The Broadcast Center
Southern Illinois University
Lindenwood College
John N. Olin School of Business
St. Louis Community College
Snelling and Snelling of Clayton
Sales Recruiters Irvin-Edwards

Included with each letter was a form to be returned to the station acknowledging that the organization had received the letter. Church Ex. 4, Att. 14. Lauher selected the above organizations based upon his assessment that they would be able to send him applicants with minimal experience because those were the kind of employees the station usually hired. Merrimac and Southern Illinois University each had significant minority enrollment. He did not send a letter to the NAACP because he did not think of the NAACP as an employment service. Tr. 189-90.

46. In response to Lauher's recommendation that KFUD and KFUD-FM should have separate EEO programs, Rev. Devantier raised Lauher's recommendation at the April 5, 1989, meeting of the Standing Committee on Broadcast of the Church's Board for Communications Services. The Standing Committee, however, resolved that the stations should continue to operate under a